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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Petition for Cancellation

Notice is hereby given that the following party requests to cancel indicated registration.

Petitioner Information

Name	AvalonBay Communities, Inc.		
Entity	Corporation	Citizenship	Maryland
Address	671 N. Glebe Road, Suite 800 Arlington, VA 22203 UNITED STATES		

Attorney information	Anna E. Raimer Jones Day 717 Texas Avenue, Suite 3300 Houston, TX 77002 UNITED STATES aeraimer@jonesday.com Phone:832.239.3786
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Registration Subject to Cancellation

Registration No	3995281	Registration date	07/12/2011
Registrant	Eaves Realty Group LLC 116 North 16Th Street Paducah, KY 42001 UNITED STATES		

Goods/Services Subject to Cancellation

Class 036. First Use: 2007/07/31 First Use In Commerce: 2009/07/31 All goods and services in the class are cancelled, namely: Insurance brokerage in the field of real estate; Real estate appraisal; Real estate brokerage; Real estate financing services; Real estate investment services; Real estate service, namely, rental property management; Real estate services, namely, property management services for condominium associations, homeowner associations and apartment buildings

Grounds for Cancellation

Other	The term for which registration has been obtained has not been used as a service mark
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Attachments	Petition for Cancellation.pdf (6 pages)(87846 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Anna Raimer/
Name	Anna E. Raimer
Date	08/15/2012

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

AvalonBay Communities, Inc.,

Petitioner,

v.

Eaves Realty Group LLC,

Registrant.

Cancellation No. _____

Registration No.: 3995281

Registration Date: July 12, 2011

Trademark:

EAVESREALTYGROUP.COM

International Class: 36

PETITION FOR CANCELLATION

Trademark Trial and Appeal Board
U.S. Patent and Trademark Office
P.O. Box 1451
Alexandria, Virginia 22313-1451

Dear Sir or Madam:

AvalonBay Communities, Inc. (“AvalonBay”), a Maryland corporation having its principal place of business at 671 N. Glebe Road, Suite 800, Arlington, VA 22203, believes that it is being damaged by U.S. Trademark Registration No. 3995281 for “Insurance brokerage in the field of real estate; Real estate appraisal; Real estate brokerage; Real estate financing services; Real estate investment services; Real estate service, namely, rental property management; Real estate services, namely, property management services for condominium associations, homeowner associations and apartment buildings” in International Class 36, and, through its attorneys, hereby

petitions to cancel the entire registration pursuant to 15 U.S.C. § 1064 and 37 CFR § 2.111(b). As grounds for this petition, it is alleged that:

1. AvalonBay is in the business of developing, redeveloping, acquiring and managing high-quality apartment communities in the United States.

2. On information and belief, Registrant Eaves Realty Group LLC (“Registrant”), a Kentucky limited liability company with an address of 116 North 16th Street, Paducah, KY 42001, is the owner of U.S. Trademark Registration No. 3995281 for “Insurance brokerage in the field of real estate; Real estate appraisal; Real estate brokerage; Real estate financing services; Real estate investment services; Real estate service, namely, rental property management; Real estate services, namely, property management services for condominium associations, homeowner associations and apartment buildings” in International Class 36 (the “Registrant’s Services”). This registration issued on July 12, 2011.

3. Upon information and belief, the term for which registration has been obtained, namely, EAVESREALTYGROUP.COM, has not been used as a trademark or service mark. Therefore, U.S. Trademark Registration No. 3995281 for EAVESREALTYGROUP.COM is subject to cancellation.

4. Upon information and belief, the use of EAVESREALTYGROUP.COM is not a service mark use entitled to registration because it is merely a domain name for Registrant’s website. Such use would be perceived by an ordinary consumer as an

address by which one may reach Registrant's website, not as a service mark for Registrant's Services. As displayed on the advertising material submitted as a specimen of use by Registrant (attached hereto as Exhibit A), EAVESREALTYGROUP.COM, which is in the same font as Registrant's physical address and positioned at the end of Registrant's contact information, is clearly intended to indicate Registrant's website address and does not separately identify Registrant's Services.

5. The specimen of use submitted with U.S. Trademark Registration No. 3995281 (Exhibit A) affirms that EAVESREALTYGROUP.COM does not function as a service mark because the specimen does not support service mark registration. Not only does the specimen not show use of the mark in a manner that would be perceived by potential customers as identifying Registrant's Services and indicating their source, but it also does not show an association between the term EAVESREALTYGROUP.COM and Registrant's Services.

6. In addition, the term EAVESREALTYGROUP.COM has not been used as a service mark because it is not used to identify or indicate the source of Registrant's Services. As shown from a review of the specimen of use and the home page of Registrant's website, a copy of which is attached as Exhibit B, the Registrant appears to have been rendering its services under the trade name EAVES REALTY GROUP, not under the service mark EAVESREALTYGROUP.COM.

7. On the basis of Registrant's failure to use the term EAVESREALTYGROUP.COM as a service mark prior to obtaining its registration, the registration embodied by said term, U.S. Trademark Registration No. 3995281, is subject to cancellation under Section 14 of the United States Trademark Act of 1946, 15 U.S.C. § 1064.

8. AvalonBay believes that it is being damaged and will be damaged by the continued registration of Registrant's EAVESREALTYGROUP.COM mark. For example, AvalonBay is being damaged by this registration because the U.S. Patent and Trademark Office has cited the registration against U.S. Trademark Application Serial No. 85/459,268 filed by AvalonBay for the mark "EAVES BY AVALON."

In view of the above, Registrant is not entitled to maintain a federal registration for the mark EAVESREALTYGROUP.COM in that Registrant has not used the term EAVESREALTYGROUP.COM as a service mark.

WHEREFORE, AvalonBay prays that said U.S. Trademark Registration No. 3995281 be cancelled in its entirety and that this Petition for Cancellation be sustained in favor of AvalonBay. The appropriate fee is submitted herewith. Please direct all future correspondence to the undersigned.

Respectfully submitted,

Dated: August 15, 2012


By: _____

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CERTIFICATE OF SERVICE

It is hereby certified that a true and complete copy of the foregoing entitled Petition for Cancellation has been served on Registrant Eaves Realty Group LLC at the correspondence address of record in the United States Patent and Trademark Office by mailing said copy on August 15, 2012, via U.S. Mail, postage prepaid to EAVES REALTY GROUP LLC, 116 N 16TH ST, PADUCAH, KY 42001-2710.


Anna E. Raimer